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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,358	02/12/2004	Steven Tischer	030514 (BLL-0143)	5081
36192 7590 05/18/2007 CANTOR COLBURN LLP - BELLSOUTH 55 GRIFFIN ROAD SOUTH BLOOMFIELD, CT 06002			EXAMINER ALLEN, WILLIAM J	
			ART UNIT 3625	PAPER NUMBER
			MAIL DATE 05/18/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/777,358

Applicant(s)

TISCHER, STEVEN

Examiner

William J. Allen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 20-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 20-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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DETAILED ACTION

Prosecution History Summary

Claims 1-9 and 20-27 are pending and rejected as set forth below.

Claims 10-19 have been canceled previously.

Claim Objections

Both claims numbered as 24 are objected to because of the following informalities: The claims have been doubled numbered.

For examination purposes, claim 24 depending on claim 23 will be denoted as 24(a) and claim 24 dependent from claim 1 will be denoted as 24(b).

Appropriate correction is required.

Response to Arguments

Applicant's arguments filed 3/5/2007 have been fully considered but they are not persuasive.

On pages 7-9, Applicant asserts that the combination of Forslund and Moskowitz does not teach the claimed invention. The Examiner disagrees and notes the following:

Forslund teaches a user mobile device such as a mobile phone complete with "a smart card wallet" facilitating secure shopping transactions made via the phone, broadcasts a list of items to be purchased as a user enters a mall or shopping venue, and retrieve a list of stores and the items they offer in accordance with the transmitted list (see at least: abstract, col. 2 lines 51-64, col. 8 line 54-col. 9 line 6). Forslund merely lacks the feature of *iteratively* broadcasting the list of items once inside the mall. For this feature, the Examiner has relied upon Moskowitz, which teaches the iterative transmission of a first data signal. Applicant, however, asserts that because the first data signal of Moskowitz is transmitted without any information, Moskowitz does not cure the deficiency of Forslund. To clarify the Examiner's position, Forslund teaches the data signal containing the necessary information but simply does not teach the *iterative* transmission of that first signal. Moskowitz, in turn, teaches the concept of iterative transmission of a wireless signal. Thereby, it is the combination of Forslund and Moskowitz that teaches the claimed invention. Furthermore, Applicant is reminded that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In view of the above, the rejection is hereby maintained.

Regarding claim 21, the Examiner further notes that Bluetooth-enabled portable wireless device includes core protocols of Baseband, Link Manager Protocol, Logical Link Control and Adaptation Protocol, and Service Discovery Protocol, and the Bluetooth serial cable emulation protocol.

As a clerical matter regarding claim 22, the Examiner notes that the rejection heading on page 8 of the previous action has been changed to correct a typographical error. The heading now addresses claim 22 as the body of the claim had addressed previously. No new grounds of rejection have been issued as a result of this matter.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1, 4, 6, 7-9, and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forslund et al. (US 6250557) in view of Moskowitz et al. (US 20040015403).**

Regarding claims 1 and 20, Forslund teaches a user mobile device such as a mobile phone complete with “a smart card wallet” facilitating secure shopping transactions made via the phone (see at least: abstract, col. 2 lines 51-64). Forslund further teaches a user establishing a shopping list prior to visiting a shopping mall, with the list being stored on the smart card wallet of the mobile phone. As the user enters the mall, the smart card wallet broadcasts the list of items to be purchased along with associated discount information (*i.e. transmitting a first data message using a mobile transceiver device, the first data message having information on a desired product or service*), with the “broadcasting” done in order to retrieve a list of stores and the items they offer in accordance with the transmitted list (*i.e. there is a determination whether at least one of the product or service providers has the desired product or service*). With no identification of specific store (*i.e. product or service providers*), the product list is transmitted *regardless of identities of the product or service providers and abilities of the product or service providers to provide the desired product or service*. By Forslund also teaches *transmitting a*

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second signal including a second data message to the mobile transceiver device, the second data message containing an offer to sell the desired product or service by displaying the stores and their respective offerings to allow a user to select the best stores to make purchases from (see at least: col. 8 line 54-col. 9 line 6, claims 1 and 10).

Though Forslund teaches all of the above and the transmission of the first data message, Forslund does not teach where the message is *iteratively transmitted to the product or service providers*.

In the same field of endeavor, Moskowitz teaches a Bluetooth enabled portable device having browser to exchange data with a merchants within range of the device (see at least: abstract; 0004). More particularly, both the customer's wireless device and the merchant's wireless device periodically, and thereby *iteratively*, transmits a short-range identity signal (see at least: 0004, Fig. 3 (#302)). Thereby, Moskowitz teaches where a first data message is *iteratively transmitted to the product or service providers* within range of the device.

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of Forslund to have included a first data message that is *iteratively transmitted to the product or service providers* within range of the device taught by Moskowitz in order to ensure a transmission is completed. By periodically, and therefore iteratively, transmitting the signal, the device itself automatically repeats the signal to ensure that a receiver receives the message and the transaction is completed, thereby facilitating a quick and automated way of

carrying out an offer, acceptance, and delivery of services and goods (see at least: Moskowitz, 0004, 0008).

Regarding claim 4, Forslund in view Moskowitz further teaches sending a menu of goods and services to the user resulting from the detection of a first data signal. Thereby, Moskowitz teaches sending an *offer to sell a product or service in the second data message including a product or service identifier and a price of the product or service* (see at least: Moskowitz, abstract (note “menu of goods/service”), 0005, 0033-0034, Fig. 3). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of Forslund to have included sending an *offer to sell a product or service in the second data message including a product or service identifier and a price of the product or service* as taught by Moskowitz in order to facilitate a quick and automated way of carrying out an offer, acceptance, and delivery of services and goods (see at least: Moskowitz, 0004, 0008).

Regarding claim 6, Forslund further teaches *wherein the mobile transceiver device comprises a cellular telephone* (see at least: Fig. 1A-2B).

Regarding claim 7, Forslund in view of Moskowitz teaches *wherein the product or service providers directly receives the first signal having the first data message at the store location* (see at least: Moskowitz, Fig. 1, abstract, 0004).

Regarding claim 8, Forslund in view Moskowitz further teaches transmission in *predetermined time intervals* (see at least: Moskowitz, 0004). Webster's Dictionary defines the term periodic as repeated cycles occurring at regular intervals; thereby, Moskowitz encompasses the term *predetermined time intervals*. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of Forslund to have included transmission at *predetermined time intervals* as taught by Moskowitz in order to facilitate a quick and automated way of carrying out an offer, acceptance, and delivery of services and goods (see at least: Moskowitz, 0004, 0008).

Regarding claim 9, Forslund in view of Moskowitz further teaches *receiving the second signal by the cellular telephone and displaying the second data message from the signal on the display screen* (see at least: Forslund, col. 8 line 66-col. 9 line 1).

Regarding claim 21, Forslund in view of Moskowitz further teaches *wherein iteratively transmitting the first signal includes iteratively transmitting the first signal through multiple communication protocol to transmit the first signal in each protocol* (see at least: Moskowitz, 0017-0018, 0023-0024). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of Forslund to have included *wherein iteratively transmitting the first signal includes iteratively transmitting the first signal through multiple communication protocol to transmit the first signal in each protocol* as taught by Moskowitz in order to facilitate a quick and automated way of carrying out an offer, acceptance, and delivery of services and goods (see at least: Moskowitz, 0004, 0008).

3. Claims 2-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forslund in view of Moskowitz as applied to claims 1, 4, 6-9, and 20-21, and in further view of Walker et al. (US 5794207).

Regarding claims 2-3 and 5, Forslund in view of Moskowitz teaches all of above as noted and further teaches sending a first data message includes a product or service identifier (see at least: Forslund, col. 8 lines 54-62 (note the "list" must contain *identifiers*). Forslund in view of Moskowitz, however, does not expressly teach *a desired price* and an *expiration date wherein an offer to sell the desired product or service is not desired after the expiration date*, and *a second data message further including an offer expiration date wherein the offer to sell expires after the offer expiration date*.

Walker teaches where a first data message (CPO) transmitted from a wireless PDA includes a subject and description of the desired good or service, *a desired price* and an *expiration date wherein an offer to sell the desired product or service is not desired after the expiration date* (see at least: Fig. 5 (#540 and #550), Fig. 7, col. 16 line 12-col. 17 line 64). Walker also teaches wherein a seller may submit a counter offer following the same process that the buyer uses to generate the CPO (see at least: Fig. 18, col. 22 lines 52-58). The Examiner notes that this process encompasses the addition of an expiration date (now by the seller), thereby Walker teaches *a second data message further including an offer expiration date wherein the offer to sell expires after the offer expiration date*. It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Forslund in view of Moskowitz to have

included a second data message further including an offer expiration date wherein the offer to sell expires after the offer expiration date as taught by Walker in order to provide a system that allows a seller satisfying the buyer criteria to bind the buyer to the offer and collect funds immediately (see at least: col. 7 lines 36-42).

4. **Claims 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forslund in view of Moskowitz as applied to claims 1, 4, 6-9, and 20-21, and in further view of Silverman et al. (US 5136501).**

Regarding claim 22, Forslund in view of Moskowitz teaches all of the above as noted and further teach where a second data message contains multiple offers to sell, the offers to sell being from stores matching the buyer criteria and displayed in order to allow the buyer to select the best stores to purchase from (see at least: Forslund, col. 8 line 54–col. 9 line 6).

Though Forslund in view of Moskowitz teaches receiving multiple second messages and determining the best stores, Forslund in view of Moskowitz does not expressly teach *predetermined number of data messages for sale with the lowest price*.

Silverman teaches a matching system for effectuating trades between two entities (see at least: abstract). Silverman further teaches receiving a plurality bids/offers (i.e. *second data message*) and routing those bids/offers to a user “keystation”. The bids/offers available to the user, however, are merely a restricted subset of the total bids/offers. The “keystation book display”

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include displayable data (i.e. the bids/offers received) with the displayable data having a defined display depth range (see at least: col. 2 lines 17-35, col. 4 line 66-col. 5 line 7). Furthermore, the bids/offers are matched and displayed based on various criteria including price (see at least: col. 3 lines 39-43). Thereby, Silverman teaches where the second data message provided to the user contains *a predetermined number of data messages for sale with the lowest price*.

It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Forslund in view of Moskowitz to have included *predetermined number of data messages for sale with the lowest price* as taught by Silverman in order to provide a system that reduces overhead required by a network and efficiently transmit required information to a user of the network (see at least: Silverman, col. 2 lines 30-33, col. 5 lines 33-35).

5. **Claims 23-24(a) and claims 24(b)-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forslund in view of Moskowitz as applied to claims 1, 4, 6-9, and 20-21, and in further view of Nanni et al. (US 6389269).**

Regarding claims 23-24(a) and claims 24(b)-25, Forslund in view of Moskowitz further teaches all of the above as noted including iteratively transmitting a first signal and receiving a second signal in response. Forslund in view of Moskowitz, however, does not expressly teach *determining a first protocol and second protocol to iteratively transmit the first and second signal*, and further does not teach *cycling through multiple communication protocols to*

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iteratively transmit a first and second signal. In the field of mobile electronics, Nanni teaches a method and apparatus for transmitting signals in multi-frequency, multi-mode environments (see at least: abstract, col. 1 lines 6-8). More specifically, Nanni teaches the use of multi-band/multi-mode devices allowing users to operate the device within multiple system standards (see at least: col. 1 lines 14-18 and 29-36, col. 3 lines 42-63, col. 4 lines 22-28). The Examiner further notes that a notable function of multi-band/multi-mode devices is to support varying types of transmission technologies or “protocols” and further switch frequency bands and transmission modes as needed (e.g. initially trying a digital mode first then attempting an analog mode). Thereby, Nanni effectively teaches *determining a first protocol and second protocol to iteratively transmit the first and second signal*, and further does not teach *cycling through multiple communication protocols to iteratively transmit a first and second signal*. It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Forslund in view of Moskowitz to have included *determining a first protocol and second protocol to iteratively transmit the first and second signal*, and further does not teach *cycling through multiple communication protocols to iteratively transmit a first and second signal* as taught by Nanni in order to provide a user device which operate with more than one system standard so as to allow a user to move freely from one system to another while maintaining device operations (see at least: Nanni, col. 1 lines 14-18 and 29-36).

6. **Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forslund in view of Moskowitz as applied to claims 1, 4, 6-9, and 20-21, and in further view of Fano et al. (US 20050091118).**

Regarding claim 26, Forslund in view of Moskowitz further teaches all of the above as noted including iteratively transmitting a first signal and receiving a second signal in response. Forslund in view of Moskowitz, however, does not expressly teach a *third data message including an additional offer to sell the desired product*. In the same field of endeavor, Fano teaches an agent-based system utilizing a portable device such as a PDA for GPS based wireless shopping (see at least: abstract). More specifically, Fano teaches displaying items of interest in stores nearest to the user, and further receiving an alert to local retailers offering the same product for sale (i.e. *a third data message*) upon user selection of an item of interest (see at least: Fig. 27, 0288). Thereby, Fano teaches a *third data message including an additional offer to sell the desired product*. It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Forslund in view of Moskowitz to have included a *third data message including an additional offer to sell the desired product* as taught by Fano in order to alert users to additional sales opportunities such as local retailers in order to find the best deal or best price available (see at least: Fano, 0288).

7. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forslund in view of Moskowitz as applied to claims 1, 4, 6-9, and 20-21, and in further view of Vermande (US 20020095340).

Regarding claim 27, Forslund in view of Moskowitz further teaches all of the above as noted including iteratively transmitting a first signal and receiving a second signal in response. Forslund in view of Moskowitz, however, does not expressly teach displaying the second, third, etc. data messages *in response to a generation of a signal indicative of a key selection from the keypad to view the data messages*. In the field of wireless advertising, Vermande teaches a wireless terminal using utilizing a WAP service module storing advertisements without displaying them in a memory so as to be able to display them at a later time while browsing the memory (see at least: abstract). More specifically, Vermande teaches *in response to a generation of a signal indicative of a key selection from the keypad to view the data messages* by allowing advertisements to be saved and browsed at a later time by a user (see at least: 0004, 0022, 0025). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Forslund in view of Moskowitz to have included *in response to a generation of a signal indicative of a key selection from the keypad to view the data messages* as taught by Vermande in order to provide a system that prevents a user from being disturbed by presenting compulsory advertisements while still allowing a user to view the advertisements as they please at a later time (see at least: Vermande, 0005).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- PTO 892 U discloses dual/multi mode and dual/multi band cellular devices and their ability to make use of multiple wireless protocols

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to William J. Allen whose telephone number is (571) 272-1443. The examiner can normally be reached on 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff A. Smith can be reached on (571) 272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

William J. Allen
Patent Examiner
May 8, 2007


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